

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

MAR 18 2003

FOR THE DISTRICT OF NEW MEXICO

JOSE CUZA TELLES,

Robert J. Marshall
CLERK

Defendant/Applicant,

v.

Civ. No. 02-0649 MV/RLP

JOHN DANTIS,
UNITED STATES OF AMERICA,

Respondents.

**MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDED DISPOSITION¹**

1. This is a proceeding brought pursuant to 28 U.S.C. §§ 2241 and 2255. Defendant was being held at the Bernalillo County Detention Center, of which Respondent John Dantis is the Warden.² Defendant is being held on state, not federal charges. According to Respondent United States of America (the Government), a federal indictment has been filed³ and a federal detainer has been lodged, but no other proceedings have been brought or undertaken.

¹ Within ten (10) days after a party is served with a copy of the "Magistrate Judge's Proposed Findings and Recommended Disposition" (the "Proposed Findings") that party may, pursuant to 28 U.S.C. § 636 (b)(1), file written objections in the United States District Court to the Proposed Findings. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the Proposed Findings. If no objections are filed, no appellate review will be allowed.

² According to the United States, Defendant has been moved from Bernalillo County Detention Center to the Central New Mexico Correctional Facility in Los Lunas, New Mexico.

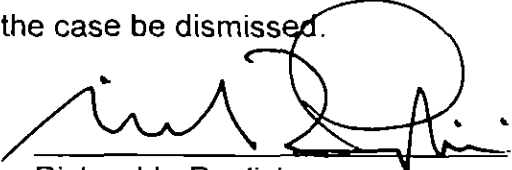
³ The court has been unable to find a criminal file in this jurisdiction under Defendant's name.

2. It is the Government's position that this court has no jurisdiction under 28 U.S.C. §§ 2241 or 2254 because he has neither been charged with a federal crime nor is he in federal custody. The Government states that Defendant may request trial within 180 days on the federal charges, pursuant to the Interstate Agreement on Detainers Act, § 2, art. IV, 18 U.S.C.A. App., but that he has not done so.

3. In his § 2255 Application Defendant states that his federal case has been pending for over two years and he hasn't yet been in front of a judge. That language suggests that Defendant is requesting a trial on the pending federal indictment, but an application under §§ 2241 or 2255 is not the proper vehicle. Such requests are ordinarily made by counsel and this court has no jurisdiction to appoint counsel for Defendant under the posture of this case. Accordingly, the court recommends that the petition be dismissed for lack of jurisdiction.

Recommended Disposition

I recommend that the petition be denied and the case be dismissed.



Richard L. Puglisi
United States Magistrate Judge